United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

ORIGINAL

74-2504

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P/S

To be argued by
Stanley F. Meltzer.

United States Court of Appeals

For the Second Circuit.

JOHN E. CUFF,

Plaintiff-Appellee,

against

THOMAS W. GLEASON, JOHN BOWERS, LESTER GARDNER, VINCENT COLUCCI, WILLIAM P. LYNCH, WILLIAM MURPHY, ANTHONY SCOTTO, WALTER L. SULLIVAN, JOSEPH VINCENZINO, and FRED R. FIELD, JR., Trustees of the INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, and J. J. DICKMAN, R. F. CHIARELLO, JAMES G. COSTELLO, C. H. C. EVERHARD, DAGFINN GUNNARSHAUG, JOSEPH F. McGOLDRICK, F. X. McQUADE, MICHAEL E. MAHER, RUSSELL W. NEITZ and DONALD J. SCHIMIDT, Trustees of the NEW YORK SHIPPING ASSOCIATION, Inc., together constituting the joint Board of Trustees of THE NEW YORK SHIPPING ASSOCIATION-INTERNATIONAL LONGSHOREMEN'S ASSOCIATION PENSION PLAN AND NYSA-ILA PENSION TRUST FUND,

Defendants-Appellants.

BRIEF OF PLAINTIFF-APPELLEE.

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THE REPORTER COMPANY, INC., NEW YORK, N. Y. 10007—212 732-6978—1975

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BRIEF OF PLAINTIFF-APPELLEE

STATEMENT OF THE ISSUES

1. Does the District Court have the power to compel a labor-management Pension Board of Trustees to comply with the express provisions of its pension plant relating to the granting of disability pensions?

2. Where the pension plan in question provides as follows:

> "Any employee who is forty (40) years or older on or after January 1, 1940, who has been employed in the industry for a continuous period of not less than fifteen (15) years, and who during such continous period has been employed in the industry for a period of fifteen (15) consecutive years for an average of not less than 700 hours per year, and becomes permanently and totally disabled on or after January 1, 1952, being employed in the industry at the time he sustains such disability, shall be entitled to a pension."

is such language clear and unequivocal, such that the court may compel the Board of Trustees to comply with its terms in the instant case?

PROCEEDINGS BELOW

Plaintiff is a disabled member of the International Longshoremen's Association, having become disabled in 1972 while actually being employed in the longshore industry.

The appellants are the trustees of the joint board of The New York Shipping Association-International Longshoremen's Association Pension Plan (hereinafter referred to as "pension plan" or "plan").

The pension plan was created in or about 1949 under the impetus of the Labor Management Relations Act (Taft-Hartley Law), 29 U.S C. 185 et seq., and more particularly §186 of Title 29, U. S. C.

Plaintiff applied to the defendant in 1972 for a payment of disability benefits in accordance with Article III, Section 7 of the plan, which states, as follows:

> "Any employee who is forty (40) years or older on or after January 1, 1940, who has been employed in the industry for a continuous period of not less than fifteen (15) years, and who during such continuous period has been employed in the industry for a period of fifteen (15) consecutive years for an average of not less than 700 hours per year, and becomes permanently and totally disabled on or after January 1, 1952, being employed in the industry at the time he sustains such disability, shall be entitled to a pension."

It is conceded by the defendants that Mr. Cuff, the plaintiff, is and at all pertinent times has been disabled within the meaning of the plan. The refusal of the defendants to confer the benefits provided for in the plan, derives not from a failure of proof as to disability, but rather from an arbitrary, capricious and unreasonable interpretation of the aforesaid provision, as indicated hereinafter.

Accordingly, plaintiff instituted the within action in the Supreme Court of the State of New York, County of Kings. The defendants then removed the suit to this Court, pursuant to 28 U.S.C. 1441, since it is claimed that the subject litigation is a labor dispute within the general purview of 29 U.S.C. 185 et seq.

Having removed the action the defendants moved, in lieu of answering, for an Order dismissing the complaint and granting summary judgment pursuant to Rules 12(b) and 56 of the Federal Rules of Civil Procedure. In so doing, the defendants relied upon the affidavit of Anthony Aurigemma, the agreement itself, and the minutes of the meeting at which the plaintiff's disability application was denied.

Plaintiff cross-moved for summary judgment and for declaratory judgment pursuant to Rule 57.

On October 16, 1974, the District Court by Bruchhausen, J., found that it had the power and authority to review interpretation made by Boards of Trustees to determine whether there had been a violation of the statute either in its letter or in its spirit.

On that basis the Court concluded that the agreement was express and clear that the plaintiff came within its provisions and that he was entitled to disability benefits effective September 1, 1972. Judgment was duly entered upon said decision and appeal has been taken therefrom by the defendants.

THE FACTS

The complaint alleges, and it is not disputed, that plaintiff was born in 1915; that he worked the requisite number of hours to qualify for a pension (if otherwise qualified) from 1937 until October 1955; that he was then suspended from the Union from 1955 until 1958; that he was reinstated in 1958. Mr. Aurigemma's affidavit states that there was a "break in service from 1956 to 1965", which for the purpose of this motion, the plaintiff accepts.*

Thereafter, from 1966 through 1972, a period of 7 years, Mr. Cuff again met the minimum hourly requirements for credit toward a pension. Therefore, it may be stated, without fear of contradiction, that plaintiff met the yearly requirements for credit toward a pension from 1937 through 1955, inclusive, a period of 19 consecutive years, and from 1966 through 1972, an additional 7 years. Thus, in toto, Mr. Cuff has been engaged in employment that falls within the coverage of the plan for at least 26 years, of which 19 years were consecutive. And there is absolutely no question that plaintiff was "employed in the industry at the time he" sustained the disability as required by the plan.

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*The break in plaintiff's continuous service, due to the combination of an improper suspension from the Union, his reinstatement in 1958 and his inability to obtain work until 1965, primarily as a result of his loss of seniority resulting from the suspension and other factors, might well be valid issues of fact precluding summary judgment to the defendant, even if Article III, Section 7 were to be given the strained interpretation defendants seek. C.F Teston vs Carey, 464 F.2d 765 (C A.D C 1972).

However, since it is clear that the provisions of the plan simply do not permit of such interpretation in any event, plaintiff respectfully submits that ultimately the 10 year hiatus (1956 to 1965) is irrelevant to the granting of summary judgment in favor of the plaintiff on his cross-motion.

POINT I

IMPROPER, ILLEGAL, ARBITRARY OR CAPRICIOUS DETERMINATIONS OF A PENSION FUND JOINT COMMITTEE IN THE INTERPRETATION OF THE PENSION PLAN ARE REVIEWABLE IN THE DISTRICT COURT.

The Labor Management Relations Act, Section 302(c) (5), 29 U.S.C 186 (c) (5) was enacted to make it illegal for employers and the Unions with which they dealt to weaken welfare, pension or disability funds intended for Union members. It was shortly thereafter stated:

> "The Court considers such funds as rather sacred, and it is the purpose of the law that they be available when due under the contract."

United Garment Workers of America v. Jacob Reed's Sons, et al. 83 F.Supp.49, 52 (D.C., Pa. 1949).

For this reason it has been held that:

> "A provision in the by-laws or regulations denying the employee-members the right to resort to the Courts to protect their beneficial interest in the fund is of no legal effect."

Upholsterer's Intern. Union of North America v. Leathercraft Furniture Co., 82 F.Supp.570, 575 (D C Pa., 1949).

Clearly, the court has jurisdiction to determine whether there has been a violation of the plan either in its letter or its spirit, Moglia v. Geoghegan, 267 F.Supp.641, 645 (S.D N.Y ,1967), Aff'd.,403 F.2d 110 (C.A.2), Cert. denied 394 U.S 919, although it is equally clear that there is no general power to rephrase the language of the plan.

A Court clearly has the right to determine whether the trustees have given the clause in question a reasonable interpretation or whether the reading given it has been arbitrary or capricious. See Haynes v. Lewis, 298 F Supp.331 (D D.C.,1969). The test is whether the trustees have acted unreasonably, Teston v. Carey, 464 F.2d 765 (C.A.D.C. 1972).

Thus, the clause of the Pension Plan which states that the trustees' decision shall be final is either of no effect or, as a result of a vast number of cases, must be construed to mean that it is the final or last of the internal administrative procedures available to plaintiff and that since he has exhausted his internal or final administrative remedies, he now may proceed - as he has done - to have his rights adjudicated in this forum.

POINT II

THE LANGUAGE OF ARTICLE III, SECTION 7, IS CLEAR AND UNAMBIGUOUS; THE TRUSTEES HAVING WRITTEN THE PLAN, THEY MAY NOT FOIST UPON THIS COURT OR THIS PLAINTIFF A CONSTRUCTION THEREOF WHICH VIOLATES THE PLAN AND WHICH IS ARBITRARY, CAPRICIOUS, UNREASONABLE AND INEQUITABLE.

In defendants' notice of motion and again in Mr. Aurigemma's affidavit, it is contended that as a condition precedent to becoming eligible for disability benefits, the plaintiff must, inter alia have been employed in the industry for a continuous period of not less than fifteen (15) years immediately prior to his application for such pension. (emphasis supplied.) (See notice of motion and page 3 of affidavit).

However, the provisions of Article III, Section 7, drafted by the defendant and being clear and unambiguous beyond cavil, plainly and simply contain no such requirement. Beyond doubt, as written, the provision is fulfilled by plaintiff's 19 years of uninterrupted service from 1937 to 1955, coupled with this employment in the industry at the time of the onset of disability. The cases are legion, of course, that a clear and unambiguous provision may not be subjected to "construction" or parol evidence" or "amplification" or "legislative intent".

Thus, the Board's tortured attempt here to read into the provision an additional requirement in order to defeat plaintiff's claim, is arbitrary and capricious and would be both unreasonable and inequitable.

Under the guidelines enunciated in Point I, this Court must not allow plaintiff's rights to be defeated. Further, the case of Lavella v. Boyle, 444 F.2d 910 at 912 (C.A.D C 1971), Cert. denied 404 U.S. 850 stands clearly for the proposition that in the absence of express language such as argued for by the defendants, the requisite period of employment in the industry can be at any time (emphasis in the original).

The defendants contend, however, that Article III, Section 2, modifies Article III, Section 7. This provision states that:

> "Employment in the industry shall be deemed to have terminated and shall no longer be considered continuous when the employee has worked in the industry less than 400 hours a year for more than two (2) calendar years . . ."

However, it should be abundantly clear that Section 2 simply states further whether a person has been employed the requisite number of hours in any given year in determining whether he has attained fifteen consecutive years of "continued employment".

It takes a determined perversity to attempt to foist upon a court an interpretation that if a man has accumulated fifteen or more years of continuous employment - which plaintiff concedely has acquired - that the subsequent failure to maintain such level of employment defeats his prior acquired interest.

All that can be said about Section 2 is that it provides a measuring stick to determine whether a man has acquired fifteen or more years of continuous employment, so that if in any one year during said fifteen years he has worked less than 400 hours, there would be a break in service. However, admittedly, such is not the caae with the plaintiff herein.

The District Court did not err in refusing to treat Article III Section 2 as a termination of plaintiff's rights for the simple reason that nothing in the Pension Plan permits of an interpretation that would divest plaintiff of his rights under Section 7.

POINT III

APART FROM THE FACT PLAINTIFF MANIFESTLY FALLS WITHIN THE EXPRESS LANGUAGE OF ARTICLE III SECTION 7 HIS RIGHTS ARE FULLY MATURED AND VESTED AND ARE NOT SUBJECT TO BEING DEFEASED EITHER BY DEFENDANTS' UNREASONABLE PRESENT INTERPRETATION OF THE PLAN OR ANY MODIFICATION THEREOF.

Article III, Section 7 directs that Union members receive disability benefits upon becoming disabled after being

in the Union and working the requisite number of hours for 15 consecutive years.

Thus, as early as 1951 or 1952 plaintiff would have come within the ambit of such protection (so long as he was working in the industry at the time of the onset of disability, which requirement has been conceded by the defendant).

There rights were then, in the infancy of the plan, fully matured and vested and could not be cut off or divested by a subsequent change of language (assuming the trustees undertook to change the express language of the plan) or by a new interpretation. C. F. De Paoli vs Boyle, 447 F.2d 334 (C.A D.C. 1971); Roark vs Boyle, 439 F.2d 497 (C.A.D.C. 1970); Gaydosh vs. Lewis 410 F.2d 262, 266 (C.A.D C 1969).

CONCLUSION

This is an action in which a plaintiff has contended that a pension plan should be "interpreted" or "construed". This plaintiff does not seek an expansion of the jurisdiction of the court along equitable or just lines. Rather, plaintiff has sought and has obtained from the District Court a determination that the express language of the plan is clear

Plaintiff respectfully submits that the District Court's

granting of summary judgment to him was correct and that this Court enter an Order affirming that determination.

Respectfully submitted,

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Services of three (3) copies of
the within
hereby admitted this 6th day February
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